



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application filed on May 9, 2022, is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application filed on May 25, 2022, is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

This matter proceeded on January 23, 2023, for the allotted time and was adjourned. The interim decision made on January 24, 2023, should be read in conjunction with this Decision

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

The tenants were informed that the claim for the return of the security deposit will be dealt with through the landlord's application as the landlord was entitled to retain the security deposit until their application was heard. The tenants were informed if the landlord is not successful with their claim, that security deposit will be ordered returned to the tenants in accordance with the Act.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to the return of the security deposit ?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2018. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenants paid a security deposit of \$1,200.00. The tenancy ended on May 1, 2022.

The landlord claims as follows:

a.	Unpaid utilities	\$ 318.84
b.	Garage door repair	\$ 157.50
c.	Locksmith	\$ 350.00
d.	Cost of repairs for water leak	\$18,757.60
e.	Filing fee	\$ 100.00
	Total claimed	\$19,583.94

Unpaid utilities

At the outset of the hearing the tenants stated they are not disputing the unpaid utilities that were owed at the end of the tenancy.

Garage door repair

The landlord testified that the sensor for the garage door opener had fallen off and had to be repaired. The landlord stated they were never notified during the tenancy that this was a problem.

The tenants testified that the sensor was not properly fastened, and it fell off during the tenancy. The tenants stated that they put the sensor back up and they had no further issues. The tenant stated they did not report it to the landlord as it was not an issue.

The tenants testified that when the sensor fell off again at the end of the tenancy the landlord would not let them put it back up and it would have taken them 5 minutes to do.

Locksmith

The landlord testified that the tenants were given 5 keys when the tenancy started and only 2 were returned because they said that they had packed them up while moving. The landlord stated that they had to have the locks rekeyed and had to have 4 locks reinstalled

The landlord stated that the tenants had install an alarm system without their permission and change the front door lock to a keypad, and the doorknob in the bedroom was changed as well as the laundry door. The landlord stated that they issued a warning letter in February 2020, and they were then given the code to the front door.

The landlord testified that the tenants did attempt to install the original front door lock; however, it was installed upside down and had to be reinstalled and the other locks had to be installed. The landlord stated that the garage door lock was also not working properly. The landlord stated they also had a double lock installed which they did not claim in their monetary worksheet.

The tenants testified that the people in the basement suite left, and they took over that tenancy under a different lease. The tenants stated that two keys for the basement they did return 3 days later and not subject to this dispute. The tenants stated all the keys were returned on May 4, 2022, with the garage door openers.

The tenant stated they had reinstalled the front lock upside down; however, they had such little time to move out as they received 30 days' notice to vacate. The tenant stated if they had more time and had not been rushed and told to get out, they would have fixed the lock and reinstalled the other ones they had changed during the tenancy.

The landlord argued that the tenants were required to move-out of the rental unit on April 30, 2022 at 1:00pm; however, the tenants asked for more time, and they gave them 1 extra days, which they were to be out by May 1, 2022 at 4:00pm; however, the tenant still do not vacate until 7:45pm and did not have the items completed. The landlord stated they were under no obligation to give the tenants extra time.

Cost of repairs for water leak

The landlord testified that on March 11, 2022, they received a text message from the tenant stating they went to the basement to their sewing room and that they said there was moisture damage on the ceiling, and they felt that the plumber had not fixed the

dishwasher or tap properly from two years earlier properly. The landlord stated that the tenants informed them that they had not been in this room for several months.

The landlord testified that in January 2020 they received a text message from the tenants indicating that there was water in front of the dishwasher and believed it was leaking. The landlords stated that they had a plumber attend and they looked at the dishwasher to determine that it was not leaking, and they thought that it might have leaked due to dish flipping over and caused the leak. The landlord stated that plumber also looked at the kitchen faucet and did not find it needed to be repair. The landlord stated they never received any further notification from the tenant that there was any further problems.

The landlord testified that on March 13, 2022 they found the basement room was covered in black and white mould and the ceiling was sagging, which they had to take pictures for their insurance claim.

The landlord testified at that time they found that the braid to the kitchen faucet was torn and would gush water out and filled the cabinet with water, which clearly had to be known to the tenants. The landlord stated that it was very odd that the cabinet was dry, and they believe the tenant had attempted to hide the matter as a previous hydro bill had increased by 56%.

The landlord testified that they had done a full appraisal of the property on November 5, 2021 and there was no signs of leak and no communication from the tenants at that time that there is an ongoing issue with the sprayer.

The landlord testified that when the contractor came in and took video and pictures and the first thing, they said is why could they not smell the mould and that they found a red bowl under the sink, although it was not there the previous days. The landlord stated there was no mould smell when the property was inspected earlier.

The landlord testified that they were denied by the insurance company because it was not reported within a reasonable time, and the significant damage was caused by neglect and actions of the tenants.

The landlord testified that they had to have the ceiling removed, the walls and baseboards and floors. Filed in evidence are photographs, pictures, and a receipt.

The tenants testified that the actual leak goes back to November 2019. When brought it to the attention of the landlord and asked when the kitchen tap could be repaired and

through to December and January 2020, that it was still not fixed properly and would spray on them. The tenants stated that it took 26 months to go through the pipes into the subfloor and into the bottom dwelling.

The tenants testified that the landlord showed up twice. One time with representative of an appliance store and that man never said he was a plumber. The tenants stated that the dishwasher was looked at and the cause was from loading the dishwasher wrong, which was a onetime event.

The tenant stated that the first time the landlord brought someone into look at the faucet that they wrapped with faucet braid with black tape, and they suggested that the faucet should be replaced, which the landlord stated that it was not in the budget.

The tenant stated after about a month it started to spray through the tape into their face. The tenant stated that the landlord had someone come in to look at and they simply told them not to use, it which they said okay. However, they found out the hard way that it was still leaking and continued to leak through the faucet, down the pipe into the subfloor and there was no way for them to see that. Obviously, the plumber, landlord or themselves did not know this would happen.

The tenant testified that shortly before it started to appear, in November, 2021 the landlord had a complete home inspection done by an adjustor which they had to remove all items under the sink and he found no signs of water leaking; so how would they be able to find any sign of it, if an adjustor was unable to find it. The tenant stated as soon as they saw the damaged ceiling in the basement, they immediately contacted the landlord.

The tenants testified that they use the basement as their sewing space as they are a seamstress, and when covid happened their business completely shut down and hardly were went downstairs and had not been downstairs since November 2021 when the home inspection occurred.

The tenants testified that as soon as they saw the damaged ceiling in the basement in March, 2022, they immediately contacted the landlord as they did not know what it was from, but it did not look good.

The tenants testified that they did not fight the eviction notice, because they had talked to their doctor and were concerned that living there with mould was not good for their health.

The landlord argued that the first issue was in December, 2019 was related to the garburator and the plumber found a piece of plastic in the garburator and the problem was fixed and no leak was found in the tap sprayer. The landlord stated that the plumber only charge them a minimal amount as no real work was required.

The landlord argued that they have never had any further issues reported from January 2020 until the tenants reported the damage to the lower area of the premises in March of 2022 and the home appraisal inspection completed in November 2021, shows the home was found to be above average and well maintained.

The landlord argued that mould grows in 7 days and may have just happened over the last month. The landlord stated that this is not from a long term small water leak going down a pipe as the cabinet and subfloor would have been rotten, which it was not. However, there was obvious mould growth.

The tenants responded that the pictures the landlord has submitted were taken a couple of weeks after they vacated the premises on May 1, 2022, and as the landlord stated mould grows quickly. The tenant stated they only placed a red bowl under the sink because they were going away and wanted to see if the red bowl would capture any water.

The tenant responded that the hydro went up because they were using a space heater to heat the laundry room space as it is not insulated and very cold in the winter and was tired of doing laundry room in a cold room and they left that space heater run 24/7 and did not know it would affect the hydro bill so high and as soon as they received that bill, they removed the space heater.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Unpaid utilities

The tenants agreed that they owe the outstanding utilities. Therefore, I find that the landlord is entitled to recover unpaid utilities in the amount of **\$318.84**

Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Garage door repair

Even if I accept the landlord's testimony that the sensor had fallen off and not reported to the landlord; however, the landlord would still be responsible for the repair as this is simply wear and tear. I have no evidence that the damage was caused by the action or neglect of the tenants. Therefore, I dismiss this portion of the landlord's claim.

Locksmith

I am satisfied that three of the locks had to be installed because 1 lock was installed upside down and the other 2 were not reinstalled by the tenants. While I accept the tenants may have run out of time; however, that was their responsibility to have these reinstalled by April 30, 2023. The landlord gave the tenant extra time, until May 1 2022 at 7:45 pm which there is no requirement for the landlord to do. Therefore, I find the tenant are to pay the landlord **\$75.00** for the 3 locks to be installation.

However, I am not satisfied that the tenants are responsible for the lock in the garage as this simply could be from wear and tear and the aging process.

Further, both parties have provided a different version of the number of keys returned. The landlord stated only two keys of the five keys were returned. The tenant's version was that they returned all keys to the main floor unit, which is the subject of this dispute. However, they did not return 2 of the keys to the lower unit, until May 4, 2023. While this may be a breach of the Act as the tenant must return all keys that give access to the rental unit and because they did not the landlord was entitled to have the locks rekeyed; however, based on this I cannot determine what keys a specifically related to this tenancy. Therefore, I dismiss the landlord's claim for rekeying.

The receipt shows the total labour cost of 1.5 hours and the amount of \$112.00 was billed. Due to the above finding, I award the landlord 75% of the total invoice in the amount of **\$84.00**.

Cost of repairs for water leak

In this case, I do not accept the tenant's evidence that the damage was caused by an undetected leak in the faucet that was not properly repaired in 2020. If the leak was not properly repaired and still spraying, I would expect to see ongoing communication over the next 26 months. Further, I do not accept that the sprayer was not used for the balance of the time as the braid clearly was torn and water would gush when used.

Further, an entire in-depth home inspection was conducted on November 5, 2021 and no signs of any water leak was discovered. It is not reasonable to believe that there would be no signs at that point of leakage as it would have been at least 10 months since the last communication in January 2020.

Furthermore, the damage shown in the photograph shows obvious mould growth under the sink cabinet and photographs of the ceiling drywall in the lower room show four extremely large different water stains on the ceiling drywall, which part of the drywall has deteriorated and the ceiling sagging. This would not be consistent with a small undetected leak. I find it more likely than not the damage was caused by the action or neglect of the tenants.

I cannot determine how the damage occurred. However, a reasonable person would conclude something significantly overflowed more likely than not on several occasions based on the different areas of damage. While the tenants may have immediately

cleaned any water to the upper floor and the damage to the lower area was not detected. However, that was because the tenants' have not even been in the room for at least four months due to their business not having clients. I find the action of the tenants neglectful as the rental unit was within the tenants' control and possession and had a duty of care for the premises. I find it is reasonable to concluded that the water damage should have been notice sooner by the tenants and by this neglect it voided the landlord right to have it covered by their insurance. Therefore, I am satisfied that the tenants are responsible for the damage in the amount of **\$18,757.60**.

I find that the landlord has established a total monetary claim of **\$19,335.44** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,200.00** and interest of **\$9.24** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$18,126.20**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and interest in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The tenants' application for the return of the security deposit and to recover the filing fee is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 30, 2023

Residential Tenancy Branch